

Response Under 37 C.F.R. § 1.111
Serial No.: 10/092,591
SUGHRUE MION, PLLC Ref: Q68895

REMARKS

Claims 1-17 are all the claims pending in the application. The Examiner has indicated that claims 11, 12, and 14-17 contain allowable subject matter. The only rejections entered in the Office Action, are a rejection of claims 1-9 under § 112 (second paragraph) and the obviousness-double patenting rejection of claims 1, 2, 10 and 13 over claims 7-19 of co-pending Application No. 10/779,852.

As noted previously, once all rejections have been addressed, the Examiner should withdraw the obviousness-double patenting rejection in accordance with MPEP § 1490.

With respect to the § 112 (second paragraph) rejection, the Examiner contends that it is unclear whether the support member is affirmatively recited in the claims. The Examiner reaches this conclusion because of the limitation in claim 2 that recites:

*...when the support member is attached to an area located below
the nostrils of the living body*

Frankly, Applicants do not understand this rejection. Clearly, the support member is positively recited in claim 1 as the first limitation therein. Specifically, claim 1 recites:

*a support member for supporting a light-emitting element and a
light-receiving element which are disposed on a single optical axis
so as to oppose each other;*

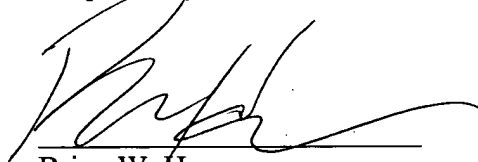
Thus, there can be no question that the support member is an affirmatively recited element of the claim. The fact that it is later referenced in regard to the respiratory flow path, which is also an affirmative recitation, does not confuse the matter. Accordingly, Applicants respectfully submit that the support member is a positive limitation and that the claim is definite.

Response Under 37 C.F.R. § 1.111
Serial No.: 10/092,591
SUGHRUE MION, PLLC Ref: Q68895

In view of the foregoing, applicants respectfully traverse the § 112 (second paragraph) rejection as outlined above. The obviousness-type double patenting rejection should be withdrawn and the case allowed. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Brian W. Hannon
Registration No. 32,778

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: March 21, 2006